

900 KAR 10:110. KHBE formal resolution process related to SHOP employers and employees.

RELATES TO: KRS 194A.050(1), 42 U.S.C. 18031, 45 C.F.R. Part 155, 156

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Kentucky Office of Health Benefit and Information Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. This administrative regulation establishes the policies and procedures for a formal review process related to SHOP employers and employees in accordance with 42 U.S.C. 18031 and 45 C.F.R. Parts 155 and 156.

Section 1. Definitions. (1) "Applicant" means an employer or employee seeking eligibility for enrollment in a qualified health plan under 900 KAR 10:020.

(2) "De novo" means a review of a formal review request without deference to prior decisions in the case.

(3) "Desk review" means an administrative review by the office of an eligibility determination.

(4) "Employee" is defined by 42 U.S.C. 300gg-91(d)(5).

(5) "Employer" is defined by 42 U.S.C. 300gg-91(d)(6), except that the term includes employers with one (1) or more employees.

(6) "Formal review record" means the formal review decision and all papers and requests filed in the formal review process.

(7) "Formal review request" means a clear expression, either orally or in writing, by an applicant, enrollee, employer, or small business employer or employee to have any eligibility determination or redetermination contained in a notice issued in accordance with 45 C.F.R. 155.310(g), 45 C.F.R. 330(e)(1)(ii), 45 C.F.R. 335(h)(1)(ii), or 45 C.F.R. 155.715(e) or (f).

(8) "Kentucky Health Benefit Exchange" or "KHBE" means the Kentucky state-based exchange conditionally approved by HHS under standards set forth in 45 C.F.R. 155.105 to offer qualified health plans on January 1, 2014.

(9) "Kentucky Office of Health Benefit and Information Exchange", "KOHBE", or "office" means the office created to administer the Kentucky Health Benefit Exchange.

(10) "SHOP" means a Small Business Health Options Program operated by an exchange through which a qualified employer can provide employees, their spouses, and their dependents with access to one (1) or more qualified health plans.

(11) "Vacate" means to set aside a previous action.

Section 2. Right to Formal Review. (1) An employer applicant may request a formal review of a:

(a) Denial of eligibility as set forth in 900 KAR 10:020; or

(b) Failure of the KHBE to make an eligibility determination to participate in SHOP within fifteen (15) calendar days of receiving an application from an employer.

(2) An employee applicant may request a formal review of a:

(a) Denial of eligibility as set forth under 900 KAR 10:020; or

(b) Failure of the SHOP to make an eligibility determination within fifteen (15) days of receiving an application from an employee.

(3) Within ninety (90) days of receipt of a notice of denial of eligibility, an applicant may submit a formal review request to the office:

- (a) Via the Web site at www.kynect.ky.gov;
- (b) By contacting the office contact center at 1-800-459-6328; or
- (c) By mail addressed to kynect SHOP, PO Box 2102, Frankfort Kentucky 40602.

(4) A formal review request shall clearly state a reason for a formal review in accordance with subsection (1) or (2) of this section.

(5) If an applicant is notified that a formal review request does not meet the requirements of this section, the applicant may amend the request to satisfy the requirements.

Section 3. Dismissal of a Formal Review. (1) A formal review requested by an applicant shall be dismissed if the applicant:

- (a) Withdraws the formal review request in writing; or
- (b) Fails to submit a formal review request that meets the requirements in Section 2 of this administrative regulation.

(2) If a formal review is dismissed in accordance with subsection (1) of this section, the office shall provide written notice to the applicant:

- (a) Within three (3) business days of the dismissal; and
- (b) That includes the reason for dismissal.

(3) The office may vacate a dismissal under subsection (2) of this section if an applicant makes a written request within thirty (30) days of the date of the notice of dismissal in subsection (2) of this section showing good cause why the dismissal shall be vacated.

Section 4. Desk Review. (1) An employer, or an employer and employee if the applicant is an employee, shall have the opportunity to submit evidence to the office for review of the eligibility determination.

(2) The office shall consider:

- (a) The information used to determine the applicant's eligibility; and
- (b) Any additional evidence provided by the applicant under subsection (1) of this section.

(3) An applicant's formal review request shall be desk reviewed:

- (a) By one (1) or more impartial office officials who have not been directly involved in the eligibility determination implicated in the formal review; and
- (b) De novo.

Section 5. Formal Review Decision. (1) A desk review by an official of the office shall result in a final formal review decision.

(2) A final formal review decision shall:

- (a) Be in writing;
- (b) Be based on:

- 1. For an applicant who is an employer, the eligibility requirements in 900 KAR 10:020; or
- 2. For an applicant who is an employee, the eligibility requirements in 900 KAR 10:020;

(c) State the decision and the effect of the decision on the eligibility of the employer or employee;

- (d) Summarize the facts relevant to the formal review;
- (e) Identify the legal and regulatory basis for the decision;
- (f) State the effective date of the decision; and

(g) Be rendered within ninety (90) days of receipt by the office of an employer or employee formal review request.

(2) The office shall issue written notice of the formal review decision to the employer, or to

the employer and employee if an employee is requesting the formal review, within ninety (90) days of the date of receipt of a formal review request in accordance with Section 2 of this administrative regulation.

(3) If the formal review decision affects the employer or employee's eligibility, the office shall implement the formal review decision.

Section 6. Formal Review Record. The formal review record shall be available and accessible to an employer, or employer and employee if an employee is requesting the formal review:

- (1) In a convenient format; and
- (2) During regular business hours which shall:
 - (a) Be Monday through Friday from 8:00 a.m. to 4:30 p.m.; and
 - (b) Exclude holidays. (41 Ky.R. 2704; Am. 42 Ky.R. 315; eff. 9-4-2015.)